

In the Matter of License No. 279788 and all other Seaman Documents  
Issued to: HAROLD R. HALVORSEN

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1461

HAROLD R. HALVORSEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 February 1964, an Examiner of the United States Coast Guard at Port Arthur, Texas suspended Appellant's seaman documents for six months outright plus six months on twelve months' probation upon finding him guilty of misconduct and negligence. The two specifications found proved allege that while serving as Master on board the United States SS EAGLE TRANSPORTER under authority of the license above described, on 2 May 1962, Appellant wrongfully failed to perform his duties due to the influence of intoxicants while the ship was in the port of Sasebo, Japan (misconduct); while serving as above on 2 May 1962, Appellant negligently permitted the ship's personnel to supervise the discharging of jet fuel and gasoline while under the influence of intoxicants (negligence).

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and five specifications, three of which were found not proved by Examiner.

The Investigating Officer introduced in evidence the deposition of five members of the United States Army who were on duty at the POL Storage Area, United States Army, Sasebo, Japan, when some of the cargo of the EAGLE TRANSPORTER was being discharged there on 2 May 1962.

The evidence in defense consists of Appellant's testimony at the hearing as well as depositions of the Chief Mate and Second Mate. The two Third Mates could not be located to obtain depositions from them.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved.

Appearance for Appellant: Phipps, Smith and Alexander of  
Galveston, Texas, by Charles B.  
Smith, Esquire, of Counsel

#### OPINION

The EAGLE TRANSPORTER, under charter to the United States Military Sea Transportation Service (MSTS), had just returned from a thirty-day trip to the Persian Gulf during which time the crew had no shore leave. Since the ship would make another trip to the Persian Gulf upon departure from Sasebo, the men were free to go ashore when they were not on watch. While discharging cargo, one of the mates other than the Chief Mate was customarily on watch in addition to a pumpman and two seamen to handle the valves. The function of the Chief Mate was to supervise the preparations until the discharge of cargo commenced and later to see that everything was taken care of properly at the completion of the operation.

During the course of the discharge operation at the United States Army storage facilities on 2 May 1962, various Army personnel went on board the EAGLE TRANSPORTER, at first to determine why no fuel was being received ashore and then later in connection with fuel leaks in the discharge line in the pump room which, in the opinion of these witnesses, created such danger to the shore facilities as well as the ship that she was required, at one time, to leave the dock and anchor while a leak was being repaired. Consequently, there was considerable contact between the five Government witnesses and the ship's personnel on this date. Based on the individual observations of these witnesses, it was their opinion that Appellant and some of the crew members in charge of the discharge operation showed clear signs of intoxication which prevented them from properly performing their duties.

On the other hand, Appellant and the two additional defense witnesses denied that Appellant and others were under the influence of alcohol or that any unsafe condition developed during the discharge operation.

As fully stated in the Examiner's decision, he accepted the testimony of the Government witnesses as representing the truth and Appellant has appealed on the ground that there is insufficient evidence to support the findings of the Examiner. It is contended that the defense could not adequately cross-examine the Government witnesses because their depositions were taken by interrogatories; the testimony of the experienced ship's officers deserves more credit with respect to the seriousness of the fuel leaks; Appellant would not have been allowed to navigate the ship from the dock to the anchorage if he had been intoxicated; and there is no support for finding that any of the ship's personnel could not carry out

his duties. Appellant submits that the six months' outright suspension is unusually harsh and requests that it be placed on probation for a period of six months.

In my opinion there is substantial evidence in the record to support the findings and order of the Examiner. Such evidence is contained in the depositions of the Government witnesses which were taken as provided for in the regulations with opportunity for Appellant or his counsel to submit cross-interrogatories. Furthermore, the judgment of these witnesses that certain individuals on the ship were intoxicated is vindicated, to some extent, by the support which was given to their other judgment, that a hazardous condition existed, by the order of the MSTs representative directing that the ship be moved from the dock until a leaking line was repaired. Thus, it was not only the opinion of the Army personnel that an extremely unsafe condition had been allowed to develop without being recognized as such by the ship's personnel. Since the condition was so dangerous as to require the ship to leave the vicinity of the shore facilities, this also supports the conclusion that the seamen were not properly performing their duties and leads to the inquiry as to why Appellant and the others in charge, did not act promptly to prevent or remove the danger. The answer seems to be that they were intoxicated.

Appellant was only seen by two of the witnesses since he could not be located at the crucial times when other witnesses were looking for him. The two witnesses testified that Appellant talked incoherently when he was informed of the danger caused by one of the leaks; his eyes were bloodshot; he had difficulty sitting up on the couch; and he could not get up from the couch when he attempted to do so. This is sufficient to establish that Appellant was guilty of misconduct by failing, due to intoxication, to perform his duty, as the person in command of the ship, to take charge of the situation. His presence on board when the ship was moved from the dock does not affect this evidence because a pilot was in charge of the navigation.

Four witnesses testified that they saw the Chief Mate intoxicated at various times, the first of which was when he was in charge of the preparations to discharge the fuel and no fuel was received ashore. At different times, the four witnesses testified that the Chief Mate talked incoherently; his eyes were bloodshot; he leaned on a rail for support; he fell asleep and snored while Appellant was talking; and that there was an odor of alcohol in the Chief Mate's room and on his breath.

Two witnesses described the pumpman on watch as talking incoherently, having bloodshot eyes, and staggering while walking.

One of the five witnesses testified that he saw other members of the crew who appeared to be drunk and smelled of alcohol, but it was not established that any of them were on watch at the time.

The evidence concerning the Chief Mate and pumpman is sufficient to show that they were intoxicated while performing duties related to the discharge of cargo. Hence, Appellant was negligent in that he permitted them to work when he either knew, or should have known, of their condition.

Under all the circumstances, there is no reason to modify the order imposed by the Examiner. These offenses are aggravated by the fact that Appellant's conduct contributed greatly to the creation of a situation which might well have resulted in a severe explosion and extensive fire.

ORDER

The order of the Examiner dated at Port Arthur, Texas, on 14 February 1964, is AFFIRMED.

E. J. Roland  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D. C., this 10th day of July 1964.